

REMARKS***Summary of Personal Interview with Examiner***

Applicants and their attorney thank the Examiner for the courtesy of the telephonic interviews conducted on April 3, 2007 and April 4, 2007 during which the foregoing amendments to the claims and the outstanding rejections were discussed.

Amendments to the Claims

Claims 3, 9-17, 25, 26 and 28-40 were pending in the application. According to the foregoing amendments, claims 3, 9, 10, 29, 34, 36, 38, 39 and 40 have been amended, claim 35 has been cancelled, without prejudice, and new claims 41-44 have been added. Accordingly, after the amendments presented herein have been entered, claims 3, 9-17, 25, 26, 28-34 and 36-44 will remain pending in this application.

Support for the amendments to the claims may be found throughout the specification and in the claims as originally filed. Specifically, claim 3 has been amended and new claims 41-44 have been added merely to re-present markush claim 3 as separate independent claims (claims 41-44 corresponding to claims 3(b-e), respectively). Accordingly, dependent claims 9, 10, 34, 39 and 40 have been amended as appropriate to correct claim dependencies. Support for the amendment to claim 36 can be found throughout the specification, for example, at page 38, lines 3-24. Lastly, support for the amendment to claim 38 can be found throughout the specification, for example, at page 32, line 28 to page 33, line 17.

Claims 25, 26 and 28-34 were previously withdrawn in response to the Restriction Requirement set forth in the Office Action of January 17, 2006. Applicants respectfully submit that claims 25, 26 and 28-34 are method claims capable of re-joinder in accordance with the provisions of MPEP § 821.04.

No new matter has been added by the claim amendments or the introduction of the new claim. The amendments to the claims and the cancellation of certain claims should not be construed as an acquiescence to the validity of the Examiner's rejections and were done solely in the interest of expediting prosecution and allowance of the claims. Applicants reserve the right to pursue the claims as originally filed in one or more further applications.

Withdrawn Claim Rejections

Applicants gratefully acknowledge the Examiner's withdrawal of the following rejections:

- a) the previous rejection of claims 3, 9-17 and 36-38 under 35 U.S.C. §101 as lacking patentable utility;
- b) the previous rejection of claims 3, 9-17 and 36-38 under 35 U.S.C. §112, first paragraph as failing to meet the enablement requirement in view of the alleged lack of patentable utility;
- c) the previous rejection of claims 3 and 9-17 under 35 U.S.C. §112, first paragraph as failing to meet the written description requirement;
- d) the previous rejection of claim 37 under 35 U.S.C. §112, second paragraph as being indefinite; and
- e) the provisional rejection of claims 3 and 9-17 on the ground of nonstatutory obviousness-type double patenting.

Rejection of Claims 3 and 9-17 Under 35 U.S.C. § 112, First Paragraph (Enablement)

The Examiner has rejected claims 3 and 9-17 under 35 U.S.C. § 112, first paragraph as allegedly lacking enablement. In particular, the Examiner is of the opinion that

[t]he specification, while being enabling for compositions comprising genes that encode a polypeptide with cysQ activity, does not reasonably provide enablement for fragments of SEQ ID NO:5 that do not encode a polypeptide with cysQ activity. (Office Action, page 3).

Applicants note that during the telephonic interviews of April 3, 2007 and April 4, 2007, the foregoing rejection was discussed and the Examiner indicated that this rejection would be withdrawn since the pending claims are enabled by Applicants' specification. Accordingly, Applicants do not address the substance of this rejection herein.

CONCLUSION

In view of the foregoing remarks, Applicants submit that the present application is in condition for allowance. If there are any remaining issues or if the Examiner believes that a telephone conversation with Applicants' Attorney would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at (617) 227-7400.

The Commissioner is hereby authorized to charge any deficiency in the fees paid herewith, or credit any overpayment, to Deposit Account No. 12-0080, under Order No. BGI-125CPCN, from which the undersigned is authorized to withdraw.

Dated: **April 5, 2007**

Respectfully submitted,

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